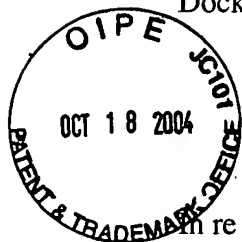


IFW ~~AF~~

Docket No.: 42390.P2319RC



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re the application of:

Marisetty

Serial No.: 10/081,659

Filed: 02/21/2002

Which is a Continuation of:

Application Serial No. 09/224,620

Filed 12/31/1998

Reissue of US Patent 5,590,342

For: Method and Apparatus for Adjusting a
Power Consumption Level Based on the
Amount of Time a Processor Clock is
Stopped

Examiner: Auve, G.

Art Unit: 2111

REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant hereby submits this Reply in response to the Answer provided by the Examiner, in the above-referenced case. Appellant respectfully requests consideration of the remarks included in this Reply by the board of Patent Appeals and Interference for allowance of the above-referenced patent application.

10/20/2004 AWONDAF1 00000041 022666 10081659

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

By: Anne Collette
Anne Collette

Date: October 13, 2004

Reply to Examiner's Answer Regarding Appellant's "Summary of the Invention"

In the Examiner's Answer, he mentions that he believes that the summary of the invention included in Appellant's Appeal Brief is somewhat broader than the specification. Appellant disagrees. The summary of the invention included in Appellant's Appeal Brief describes the invention in terms of its functionality and improvements over the prior art without specifically identifying a particular apparatus, software routine, or other module to provide this functionality and improvement. Appellant respectfully submits, and reiterates throughout this Reply, that simply describing a mechanism or apparatus in terms of its function is not necessarily broader than describing the mechanism or apparatus **only** by its specific structure or name.

Reply to Examiner's Objection to Applicant's Oath/Declaration

The Examiner states that Applicant's oath/declaration submitted December 29, 2003 is defective because it states that "claims of the original patent are limited to a 'device manager'". Appellant hereby advises the Examiner and the Board to refer to the latest oath/declaration mailed on April 21, 2004, in which Applicant corrects the problems pointed out by the Examiner with regard to the oath/declaration. However, Appellant maintains that these corrections are not necessary under the combined requirements of 35 USC §251, MPEP 1414(II)(c), and 37 CFR §1.175(a)(1), and that it is sufficient to merely cite attorney's failure to appreciate the scope of the invention as an "error" upon which a broadening reissue may be based, according to the relevant statute, rules, and case law. Appellant provides more discussion on this point later in this Reply.

Reply to Examiner's Answer Regarding Appellant's Arguments

Does the Recapture Doctrine Bar any Broadening of a Claim Beyond a Limitation that was Added to Overcome a Prior Art Rejection, Meaning that the Reissue Claim may not Include the Precise Limitation that was Added to Overcome Prior Art in the Original Patent?

The Examiner appears to answer the above question in the affirmative. Indeed, it appears that the Examiner's position is that in a reissue, Applicant may not broaden the claims in any aspect relating to what was surrendered during prosecution of the original patent without running afoul of the recapture doctrine. Although the Examiner recites the third part of the three-part test announced in Pannu, the Examiner also contends that any claim that does not include the precise term "virtual device driver" is invalid under the recapture doctrine. To require this aspect of Applicant's invention to be narrowly characterized by the name, "virtual device driver" is counter to the word and intent of 35 USC §251 and the recapture doctrine, as it necessarily precludes Applicant from broadening his claims in this aspect.

After Pannu and the subsequent modification of the holding in Pannu by the Board in Ex parte Eggert, the current state of the law concerning recapture doctrine, as applied to Applicant's reissue claims, may be best summarized by the following 3-part inquiry:

1. Are the reissue claims broader than the issued claims in any aspect?
2. If so, is the broadening related to what was surrendered during prosecution of the issued claims?
3. If so, have the reissue claims been materially narrowed in a manner related to what was surrendered during prosecution of the issued claims?

The crux of the present issue seems to be a disagreement between Appellant and the Examiner in the third prong of the three-part test above. The third inquiry essentially

says that it is in fact acceptable to broaden a claim in a manner related to that which was surrendered during prosecution as long as the reissue claim is narrowed in a manner material to that which was surrendered. On this, the Appellant and the Examiner appear to agree. However, the Examiner's and Appellant's views are disparate with regard to whether the added limitations are in fact related to the surrendered matter (i.e. "virtual device driver") and whether the added limitations narrow the claims in a material manner to what was surrendered.

The Examiner's Answer focuses on the fact that Applicant has removed the label "virtual device driver" in the reissue claims in favor of more accurate and narrow claim language describing a particular function performed in one embodiment of the invention. Specifically, the Examiner argues that the limitations added to the independent claims regarding the **determining** of time a processor's clock is stopped and **reducing** the voltage level applied to the processor in response thereto, without characterizing these functions by the name, "virtual device driver", is an impermissible recapture of subject matter surrendered during prosecution of the original claims.

The emphasis is added to the two words above, because the Examiner continually mischaracterizes in his Answer what the claims actually say by replacing "determining" with the word "measuring". Furthermore, as will be discussed below, the Examiner contends that these limitations are related to an event timer limitation present in the originally filed claims and not to the function of a virtual device driver (VxD). As Appellant will explain below, "determining" connotes a broader range of activities than merely "measuring", and in any case, event timers, are not known to reduce voltage to a processor.

The Examiner first contends that independent claim limitations regarding determining an amount of time a processor's clock is stopped and reducing the operating voltage in response thereto are not necessarily related to the use of a device driver for controlling power. The Examiner appears to focus on Appellant's use of the word "can" in Appellant's Appeal Brief in support of the above contention. Specifically, Examiner reasons that because Appellant stated that a VxD "can" perform the functions recited in the independent claims, it does not mean that the VxD actually "does" these functions.

It is Appellant's position that this is an arbitrary distinction for the purposes of applying the recapture doctrine and the Examiner is playing an irrelevant game of semantics. While it is true that a VxD can provide the functions included as limitations in the independent claims, it is also true that VxD's can provide other functions and typically do. By claiming only a narrow subset of a VxD's function, however, Appellant contends that the reissue claims are materially narrowed in a manner relating to the name, "virtual device driver", surrendered during prosecution of the original claims.

The Examiner provides a definition of a VxD in his Answer, and Appellant does not dispute this definition. The definition states in relevant part that "*A virtual device driver is used to maintain the status of a hardware device that has changeable settings*".

Appellant claims in the independent reissue claims a module, instructions, and method that maintain only one type of hardware status (whether the clock of a processor is stopped) and changing one type of changeable setting in response thereto (settings of a processor controlling operating voltage). Yet, the Examiner contends that the independent claims are not related to a VxD, when the claims recite two specific functions performed by a VxD.

The Examiner further contends that the limitations included in the reissue independent claims relate not to a VxD, but to an event timer included in the originally filed claims. In support for this position, the Examiner continually mischaracterizes at least one element of the reissue independent claims, by replacing the word “determining” with “measuring” in several places within his Answer. This is a key mistake on the part of the Examiner, because although the act of determining the clock rate of the processor may involve measuring the clock rate with an event timer, the action of “determining” involves every step necessary to discern the clock rate, and not merely the measuring of the clock rate. For example, in the case of a VxD, “determining” may involve issuing a start command to an event timer, issuing a command to stop the event timer, and reading certain registers within the processor and reporting these values to another piece of software in the system.

Furthermore, the Examiner continually overlooks the other limitation included in the reissue independent claims relating to reducing the operating voltage of the processor in response to determining whether the clock has stopped. This is also a key mistake in the Examiner’s Answer as this latter limitation is another specific function that a VxD can perform, thereby further relating the reissue claims’ limitations to the original claims’ limitation of a “virtual device driver”.

The Examiner further contends that the independent claims are broader as a whole than the originally filed claims, and therefore under Clement and Ex parte Eggert, they are rendered invalid due to the recapture doctrine. However, as explained above, the reissue independent claims recite only two functions among many that can be performed by a VxD, whereas the originally filed claims claim **any** VxD.

Appellant reiterates his contention that the proper way to judge what is materially narrowing in a claim is by the number of infringers that may captured by the claims. Surely the Examiner is not arguing that more infringers could be found to infringe a claim that recited a specific set of functions that can be performed by a VxD than a claim that simply recited a VxD generically. While it may be true that other mechanisms besides a VxD may perform the functions recited in the reissue independent claims, it cannot be conclusively said that a claim reciting these limited functions could be read on more infringing products and/or activities than one that recites a generic software program, such as a VxD, which may perform any function for which the hardware it controls is capable of performing.

However, that's precisely what the Examiner appears to be arguing. It's not surprising that the Examiner is having trouble properly applying the three-part test used in Pannu and Eggert to the facts presented in the present reissue application. Although the three-part test has been applied to claims in which descriptors of a limitation (e.g., the position of the haptics in Pannu, the shape of the retaining member in Eggert) have been modified in a reissue application, it does not appear that either Pannu or Eggert have applied the recapture doctrine to a reissue application in which a *subject* of a claim, such as a "device driver", has been modified in the reissue application. In short, the three-part test of the recapture doctrine outlined in Pannu has since only been applied to reissue applications in which an adjective of a subject of a claim is surrendered and later modified in reissue. However, the post-Pannu recapture doctrine does not appear have been applied to a reissue application in which a noun, such as a subject of the claim, has been surrendered and later modified in a reissue application.

Yet, this is precisely the situation in Applicant's reissue application. In the present reissue application, Applicant has surrendered the subject "device driver" as well as the descriptor "virtual" during the prosecution of the original claims. Having surrendered more than what Applicant believes is necessary to distinguish his invention over prior art, Applicant now seeks to claim an embodiment of the invention in terms of its function rather than narrowly characterizing the invention by claiming an embodiment in terms of an industry-familiar label, such as "virtual device driver".

Essentially, the Examiner and the Board are asked by Applicant to answer the question, "Is the test for whether a reissue claim runs afoul of the recapture doctrine dependent upon the particular name given to an aspect of the claimed invention, or is the test for whether a reissue claim runs afoul of the recapture doctrine dependent upon the function of the claimed aspect of the invention?" Appellant contends that it is the latter, and requiring Applicant to claim an aspect of his invention in terms of the exact name given to the aspect in the original claims rather than allowing him to claim the aspect in terms of its function, to the extent the prior art allows, is illogical and counter to the intent of 35 USC §251.

However, this is exactly what the Examiner is attempting to conclude by rejecting Applicant's reissue claims under the recapture doctrine. In fact, the Examiner appears to be saying that Applicant may not broaden his claims under 35 USC §251 by removing the label "device driver" and its descriptor, "virtual", but may only add limitations that include the exact words "virtual device driver". This is counter to the intent and literal interpretation of 35 USC §251, as it would preclude Applicant from broadening the claims in at least one aspect. Furthermore, requiring the Applicant to modify claims in a

reissue in a manner that does not change the precise wording of a surrendered limitation, even if Applicant narrows the claim in a manner related to the surrendered matter, is counter to intent of the recapture doctrine and the letter of the three-part test outlined in Pannu.

It is the belief of Appellant that the Examiner, like many other patent practitioners, are confused about how to apply the recapture doctrine, at least as it applies to surrendered subject matter involving a subject of a claim, such as the noun, “device driver”. In prior cases, such as Pannu and Eggert, the recapture doctrine could be applied in at least a manner that gave an Applicant room to modify **descriptors** describing position and shape of the subject of the claim. However, these cases do not address the present situation in which the **subject** of the claim was surrendered and later modified via reissue. Indeed, one runs into a logical quagmire when considering exactly what modifications to the name, “device driver” could be made to broaden the claim in one aspect, but narrow it in another aspect related to the name, “device driver”, without being forced to claim the name “device driver”.

For example, in Pannu, the court complained that the added limitations were related to the position but not the shape of the subject, “haptic”, and therefore the applicant could not escape confines of the recapture doctrine. It’s relevant to the present case, however, to pontificate how the court in Pannu would have applied the recapture doctrine if the word “haptic” itself was added to overcome prior art in the prosecution of the parent claims and later replaced with language that described the haptic’s function. Would the Pannu court contend, as does the Examiner in the present case, that any claim that does

not recite “haptic” is impermissible recapture, regardless of any more limiting terms used to describe its function?

Such an interpretation of the recapture doctrine, as applied by the Examiner in the present case, would completely nullify an applicant’s ability to broaden a claim under 35 U.S.C. §251, there would be no substitute for the term “device driver” that could broaden the claim while narrowing it in a manner material to what was surrendered. Surely this cannot be the correct interpretation of the recapture doctrine as applied to a claim subject, such as a “virtual device driver” or a “haptic”.

In sum, Appellant’s contention remains that the added limitations of determining whether a processor’s clock has stopped and reducing the operating voltage of the processor in response thereto pass the Pannu three part test referred to by the Examiner. Particularly, Appellant contends that the third part of the test is met, because 1) the reissue limitations are related to the surrendered limitation, “virtual device driver, as the new limitations recite specific functions of a virtual device driver, and 2) the added reissue limitations materially narrow the independent claims as they relate to only a subset of functions that can be performed by a virtual device driver. Furthermore, Appellant contends that the current Pannu-style recapture doctrine breaks down and completely nullifies 35 U.S.C. §251 when applying Pannu’s three-part test to a situation, like the present one, in which a **subject**, rather than a **descriptor** of a subject, of a claim is surrendered and later modified in a reissue application.

**Appellant's Reply to Examiner's Answer Concerning Whether Applicant
Surrendered Any and All Subject Matter that Lacks the "Virtual Device Driver"
Limitation.**

Applicant has acknowledged and continues to acknowledge that the addition of "virtual device driver" in the original claims was a surrender of this subject matter. However, because Applicant's reissue claims are not of the same or broader scope than the originally filed claims, the recapture doctrine cannot preclude these claims from being allowed. The Examiner reiterates his position that he believes the absence of the term, "virtual device driver" in the reissue claims is itself a recapture of subject matter that cannot be remedied by more narrowly claiming the functions provided the virtual device driver without including the term, "virtual device driver" in the reissue claims. Appellant reiterates his position that if Applicant is forced to include the name "virtual device driver" to characterize the subject of the claim, the effect of 35 U.S.C. §251 would be nullified; as any reissue claim would be at least as narrow as this aspect of the original claim and that no modification to the claim could broaden this aspect of the claim to the extent prior art allows.

Applicant has removed surrendered subject matter from the reissue claims, namely the term, "virtual device driver", in favor of claiming this aspect of the claim in terms of two narrowly defined functions – determining a stopped processor clock and reducing operating voltage in response thereto. Claiming a device driver in terms of a subset of its functions cannot conclusively be said to render the entire claim as broad or broader than the originally filed claim, which characterized this aspect of the claim by the name, "virtual device driver". If the Examiner's contention that this modification does render

the claim more broad than the originally filed claim was true, then there would be no way to claim the term “virtual device driver” without using the exact terms “virtual device driver”. This, as Appellant has argued, would nullify the effect of 35 U.S.C. §251.

Appellant’s Reply to Examiner’s Answer Concerning whether the Recapture Doctrine Bars the Independent Claims.

Appellant does not deny that the removal of the term “virtual device driver” from the reissue claims is a surrender of such matter. Appellant does contend, however, that the independent reissue claims have been materially narrowed in a manner relating to the surrendered subject matter, as required under Pannu, and that the independent reissue claims themselves are narrower than those of the originally filed independent claims.

Claim 36

Examiner erroneously concludes that because Appellant admits in his Brief that a VxD does not inherently provide the ability to determine an amount of time a processor is in a particular power consumption state or whether a clock of the processor is stopped, the limitations of claim 36 related to these elements cannot be related to the surrendered matter, VxD. Appellant is not aware of case law or a statute that requires a property of an apparatus to be inherent in order for that property to be related to the apparatus under the recapture doctrine. In any case, Appellant submits that Examiner has given too much weight to Appellant’s statement and has taken it out of context.

In arguing the fact that the limitations of claim 36 are not inherent of a VxD, Appellant was attempting to illustrate the point that a VxD is a generic term for a piece of software that controls hardware and that no particular function, by virtue of the name “VxD”, can be gleaned from this name alone. This is because VxDs perform a plurality

of functions and can vary according to the particular hardware they control. However, the Examiner appears to arrive at an incorrect interpretation of Appellant's statement – that because a function is not inherent in a VxD it must mean that the VxD does not perform that function at all. This simply isn't true.

The Examiner goes on to incorrectly argue that an event timer is responsible for determining the time in which a clock is stopped. As explained above, there can be several steps in determining the time a clock is stopped, one of which is measuring. However, the event timer will not simply measure time on its own. It must be instructed when to start and when to stop. Furthermore, just because the event timer has recorded a time interval, the time interval is not "determined" until it is read from the event timer. Starting and stopping an event timer and reading the interval it records are some of the functions of a VxD, and this is why Appellant contends that the limitation relating to determining an amount of time a clock is stopped is related to the limitation, VxD.

Finally, the Examiner complains that instructions stored on a machine-readable medium render claims 36 overly broad in relation to the limitation, VxD. However, if claiming software that performs very specific and defined functions does not materially narrow claim 36 in a manner relating to the surrendered subject matter, Appellant wonders what the Examiner *would* consider to be a materially narrow limitation relating to the surrendered matter without claiming the specific phrase, "virtual device driver" in claim 36. Under the Examiner's restrictive interpretation of the relevant rules and case law, it is difficult to imagine what a suitably narrow limitation could replace the limitation, "virtual device driver", in order to broaden the scope of claim 36 as permitted under USC §251.

Claims 42, 49, 58, 59, and 77

The Examiner reiterates the same arguments in reference to claims 42, 49, 58, 59, and 77 as he does for claims 36, which Appellant has responded to above. Therefore, Appellant reiterates the same responses in reference to claims 42, 49, 58, 59 and 77 as for claim 36.

Reply to Examiner's Answer Concerning Whether the Judicially Created Recapture-Doctrine Inherently and Irreconcilably Inconsistent with the Reissue Statute, 35 USC §251, which Permits Broadening of Claims, and Now Devoid of its Original Purpose of Ensuring Comity to the Prosecution-History-Reading Public?

Although the Examiner has rightfully declined to comment on this question, Appellant reasserts all arguments made in his Brief concerning this question. Appellant further submits that to the extent the Examiner's position is supported by the Board, the reissue doctrine cannot be applied to any reissue claim in which the **subject** of a claim rather than a **descriptor** of the subject has been surrendered in the prosecution of the original claims and modified via reissue, without completely nullifying the effect of 35 USC §251.

Essentially, the recapture doctrine requires any broadening of a surrendered claim limitation to narrow the limitation in some manner related to what was surrendered. This requirement has been applied to claim limitations that act as descriptors (i.e. adjectives) of some claim subject (i.e. noun), as illustrated in Pannu and Eggert. However, if the Examiner's position is upheld, any surrendered claim subject, such as a "device driver", could not be claimed in a reissue application without using the exact words of the

surrendered claim subject, thereby preventing the claim limitation from being claimed more broadly in at least one aspect. For this reason, and those mentioned in Appellant's Brief, Appellant contends that the judicially created recapture doctrine is inherently and irreconcilably inconsistent with the reissue statute, 35 USC §251 and now devoid of its original purpose of ensuring comity to the prosecution-history-reading public.

Reply to Examiner's Answer Concerning Whether an Attorney's Failure to Appreciate the Scope of the Invention as being Sufficient Error upon which the Applicant may Rely as a Basis for a Broadening Reissue.

In his Answer, the Examiner is piecing together various quotations of the MPEP and CFR, none of which contain the explicit requirement that any error must state a specific error within the claims nor that an attorney's failure to appreciate the scope of the invention is not an error upon which a reissue may be based under 35 USC §251. Specifically, the Examiner generates the following synopsis to support his contention that attorney's failure to appreciate the scope of the invention is not an acceptable error under 35 USC §251:

- Premise #1: 37 CFR §1.175(a)(1) states that the reissue declaration must state at least one error being relied upon as the basis for reissue.
- Premise #2. MPEP §1414(II)(C) states that any error in the claims must be identified by reference to the specific claim language wherein lies the error.
- Conclusion: Attorney's failure to appreciate the scope of the invention is not acceptable error within the meaning of 35 USC §251.

How the Examiner arrives at this conclusion from the two previous premises is incomprehensible to Appellant. This is especially perplexing given that case law,

including *In re Wilder*, has held unequivocally that attorney's failure to appreciate the scope of the invention is acceptable error under 35 USC §251. Accordingly, Appellant asks the Board to provide their opinion on whether case law or the Examiner's curiously reasoned synopsis of the CFR and MPEP is the correct rule on whether attorney's failure to appreciate the scope of the invention, without more, is grounds for filing a broadening reissue.

Appellant would like to correct one incorrect statement made by the Examiner in his Answer, in which he alleges that Applicant is "...basically saying that the claims in the patent are not of the appropriate scope for his invention..". Nowhere in the record has Applicant made such a statement. Because Applicant is modifying the claims in the broadening reissue does not necessarily mean that this was the error for which Applicant seeks a reissue. Case law has made it clear that it is enough to state in the reissue declaration that the reason for the reissue is that Applicant's attorney failed to appreciate the scope of the invention. Attorney's failure to appreciate the scope of the invention may be remedied in a number of ways, including modifying the claims, correcting the drawings, or correcting the specification.

However, the Examiner contends that any error resulting from attorney's failure to appreciate the scope of the invention must mean that there is an error in the claims. Therefore, the Examiner concludes that Applicant must identify language in the claims containing the error, as required under MPEP 1414(II)(c).

It is the Appellant's contention that a correct synopsis of case law, the rules, and the MPEP is that it is only a requirement under MPEP §1414(II)(c) that Applicant must point out specific claim language wherein the error lies **IF** the one error stated in the reissue

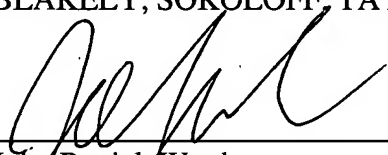
declaration, as required under 37 CFR §1.175(a)(1), is that the claims contain an error. However, case law holds that it is enough to allege in the declaration that the error is Attorney's failure to appreciate the scope of the invention.

Conclusion

Any argument in the Examiner's Answer not explicitly responded to by Appellant in this Reply should not be construed as acquiescence to such arguments by Appellant. Appellant submits that all claims now pending are in condition for allowance. Such action is earnestly solicited at the earliest possible date. If there is a deficiency in fees, please charge our Deposit Acct. No. 02-2666.

Respectfully submitted,

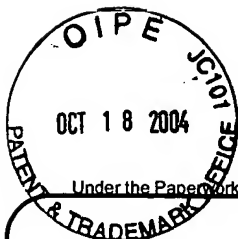
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP



John Patrick Ward
Reg. No. 40,216

Date: October 13, 2004

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PTO/SB/21 (08-03)

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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

19

Application Number

10/081,659

Filing Date

February 21, 2002

First Named Inventor

Suresh Marisetty

Art Unit

2111

Examiner Name

Glenn Allen Auye

Attorney Docket Number

42390.P2319RC

ENCLOSURES (Check all that apply)

Fee Transmittal Form (2 copies)



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Response to Missing Parts/
Incomplete ApplicationResponse to Missing Parts
under 37 CFR 1.52 or 1.53

Drawing(s)



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Petition

Petition to Convert to a
Provisional Application

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(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please
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Remarks

** A Reply Brief is enclosed.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENTFirm
or
Individual nameJohn Patrick Ward
Reg. No. 40,216

Signature

Date

October 13, 2004

CERTIFICATE OF TRANSMISSION/MAILING

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Typed or printed name

Anne Collette

Signature

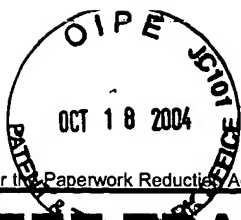
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October 13, 2004

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FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 340.00

Complete if Known

Application Number	10/081,659
Filing Date	February 21, 2002
First Named Inventor	Suresh Marisetty
Examiner Name	Glenn Allen Auye
Art Unit	2111
Attorney Docket No.	42390.P2319RC

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit
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Blakely, Sokoloff, Taylor & Zafman LLP

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to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Total Claims	Extra Claims	Fee from below	Fee Paid
Total Claims		-20** =	X	
Independent Claims		-3** =	X	
Multiple Dependent				

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	340.00
1403	00	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	6 5	Utility issue fee (or reissue)	
1502	4 0	2502	245	Design issue fee	
1503	6 0	2503	3 0	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 340.00

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	John Patrick Ward	Registration No. (Attorney/Agent)	40,216	Telephone	408-720-8300
Signature		Date	October 13, 2004		

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